

Burrows Paper Corporation and PACE International Union, Local 678, AFL-CIO.¹ Cases 26-CA-19035

September 18, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

Upon a charge filed on February 18, 1999, by the PACE International Union Local 678, AFL-CIO (the Union), the General Counsel of the National Labor Relations Board issued a complaint on February 24, 1999, alleging that the Respondent, Burrows Paper Corporation, violated Section 8(a)(5) and (1) of the Act by unlawfully withdrawing recognition from the Union. The Respondent filed a timely answer admitting in part and denying in part the allegations of the complaint, and asserting defenses.

On March 16, 1999, the General Counsel filed with the Board a motion to transfer the case to the Board and a contingent Motion for Summary Judgment. On March 17, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 9, 1999, the Respondent filed, in response to the Notice to Show Cause, an opposition to the General Counsel's Motion for Summary Judgment.

On September 15, 2000, the Board issued a Decision and Order in *Burrows Paper Corp.*, 332 NLRB 76 (Case 26-CA-18552), finding, inter alia, that the Respondent failed to bargain in good faith with the Union. Official notice is taken of the "record" in that proceeding as defined in the Board's Rules and Regulations, Section 102.45(b).

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record and brief, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Pickens, Mississippi, is engaged in the manufacture of paper products. During the 12 months ending January 30, 1999, a representative period, the Respondent, in the course and conduct of its operations, purchased and received at its Pickens facility goods valued in excess of \$50,000 directly from sources outside the State of Mississippi, and sold and shipped

from this facility goods valued in excess of \$50,000 directly to points located outside the State of Mississippi.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

In its September 15, 2000 decision in Case 26-CA-18552, the Board found that the Respondent violated the Act by, inter alia, failing to bargain in good faith with the Union from and after October 15, 1997. As a remedy, the Board ordered a 1-year extension of the Union's certification year, running from the date the Respondent begins to negotiate in good faith. See *Mar-Jac Poultry*, 136 NLRB 785 (1962); *Bryant & Statton Business Institute*, 321 NLRB 1007 fn. 5, 1045-1046 (1996). Before this decision issued on February 17, 1999, the Respondent received a petition signed by a majority of unit employees stating that they did not support the Union. On February 18, 1999, the Respondent withdrew recognition from the Union.

B. Contentions of the Parties

The General Counsel argues that the violation alleged here grows out of the dispute that gave rise to the earlier case, in which the Respondent was found not to have bargained in good faith. The General Counsel contends that the Respondent cannot rely on a petition tainted by its previous unfair labor practices, which, the General Counsel maintains, sufficiently undermined the Union's status with employees that it lost majority support. The General Counsel also argues that the Respondent's withdrawal of recognition was inconsistent with the recommendation of the administrative law judge in the earlier proceeding, now adopted by the Board, that the certification year be extended.

The Respondent contends that the Motion for Summary Judgment was premature in that it compelled the Respondent to respond in a purely anticipatory manner, uncertain as to which, if any, of the judge's findings and conclusions in Case 26-CA-18552 would be affirmed. The Respondent maintains that its withdrawal of recognition was based on either an actual loss of majority support or a good-faith doubt as to the Union's majority status. The Respondent also argues that there is no evidence that any of its actions caused employee disaffection with the Union and that the Respondent negotiated in good faith with the Union from September 1998 until it received the petition and resumed its good-faith negotiations on April 6, 1999.

¹ On January 4, 1999, the United Paperworkers International Union, AFL-CIO, CLC merged with the Oil, Chemical and Atomic Workers International Union. Accordingly, the caption has been amended to reflect that change.

C. Discussion

Section 8(a)(5) of the Act makes it unlawful for an employer to refuse to bargain collectively with the representatives of its employees. Clearly, a withdrawal of recognition, if not otherwise justified, runs afoul of this prohibition.

The Respondent contends that its withdrawal was justified by its receipt of a petition signed by a majority of unit employees stating that they did not support the Union. However, the Board, in its decision of September 15, 2000, in Case 26–CA–18552, found that the Respondent, in the course of the same contract negotiations, violated Section 8(a)(5) by failing to negotiate in good faith and by taking unilateral action on mandatory subjects in derogation of the Union’s status as bargaining representative. The Respondent also violated Section 8(a)(1) by blaming the Union for a loss of benefits. To remedy these violations, the Board, among other things, extended the Union’s certification for 1 year, running from the commencement of good-faith bargaining. Here, the Respondent has withdrawn recognition before the extended certification year had run. *Pride Refining, Inc.*, 224 NLRB 1353, 1355 (1976). In the absence of unusual circumstances, not present here, this action constituted a challenge by the Respondent to the Union’s majority status at a time when the Respondent was not free to mount such a challenge. Accordingly, we grant the General Counsel’s Motion for Summary Judgment and find that the Respondent, by withdrawing recognition from the Union, violated Section 8(a)(5) and (1) of the Act.²

REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Burrows Paper Corporation, Pickens, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

² Member Hurtgen notes that the certification year was not extended until the Board entered its remedy on September 15, 2000, after the Respondent had withdrawn recognition. Accordingly, he does not premise the violation here on an extended certification year. Rather, Member Hurtgen emphasizes that the withdrawal occurred while there were substantial unremedied 8(a)(5) violations. He also finds that any disaffection from the Union was causally connected to the antecedent unfair labor practices which constituted a general refusal to bargain. Thus, the Respondent could not rely on such disaffection as a basis for withdrawing recognition. *Lee Lumber & Bldg. Material Corp.*, 322 NLRB 175 (1996), affd. in relevant part 117 F.2d 1454 (D.C. Cir. 1997).

- (a) Refusing to meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit:

INCLUDED: All full-time and regularly scheduled part-time production and maintenance employees and truck drivers employed at Respondent’s Pickens, Mississippi facility.

EXCLUDED: All other employees including all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of unit employees with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

- (b) Within 14 days after service by the Region, post at its facility in Pickens, Mississippi, and at all other places where notices customarily are posted, copies of the attached notice marked “Appendix.”³ Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 18, 1999.

- (c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 18, 1999.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT take any action which interferes with the exercise of these rights.

WE WILL NOT refuse to bargain in good faith with the Union as the collective-bargaining representative of our employees in the following unit:

INCLUDED: All full-time and regularly scheduled part-time production and maintenance employees and truck drivers employed at Respondent's Pickens, Mississippi facility.

EXCLUDED: All other employees including all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the unit described above with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

BURROWS PAPER CORPORATION